

Remarks

I. Status of claims

Claims 1-68 are pending.

Claims 9-10, 18-22, 30-33, 37-42, 45, 61-63, and 68 have been allowed.

Claims 43 and 44 depend from allowed independent claim 37 and therefore are in condition for allowance for at least the same reasons as claim 37.

The Examiner also has indicated that claims 2-17, 23-29, 34-36, 46-48, 59, 60, and 64-67 would be allowable if rewritten in independent form.

Although the Examiner has explained reasons why claim 49 is patentable over the prior art (see page 6, paragraph 2, of the Office action), the Examiner has not explicitly indicated that independent claim 49 has been allowed. Based on the fact that the Examiner has not rejected claim 49 under any basis, it is assumed that claim 49 has in fact been allowed by the Examiner. Each of claims 50-57 depends from claim 49 and therefore is patentable for at least the same reasons as claim 49.

II. Claim rejections

The Examiner has rejected claims 1 and 58 under 35 U.S.C. § 102(e) over Kurtenbach (U.S. 2004/0196503).

A. Applicable standards for sustaining a rejection under 35 U.S.C. § 102(e)

The relevant part of 35 U.S.C. § 102(e) states that a person shall be entitled to an invention, unless - "the invention was described in -- (1) an application for patent published under section 122(b), by another filed in the United States before the invention by the applicant for patent..." Anticipation under 35 U.S.C. § 102(e) requires that each and every element of the claimed invention be present, either expressly or inherently, in a single prior art reference. EMI Group N. Am., Inc., v. Cypress Semiconductor Corp., 268 F.3d 1342, 1350 (Fed. Cir. 2001). Anticipation must be proved by clear and convincing evidence. Electro Medical Systems, S.A. v. Cooper Life Sciences, Inc., 34 F3d 1048, 1052 (Fed. Cir. 1994).

B. Independent claim 1

Independent claim 1 recites:

1. A method of processing an input image, comprising:
sub-sampling the input image to generate a thumbnail image comprising a reduced-size version of the input image in its entirety; and
detecting redeye pixel areas in the thumbnail image.

In support of the rejection of claim 1, the Examiner has stated that:

As to claim 1, Kurtenbach discloses a method of processing an input image, comprising:
sub-sampling the input image to generate a thumbnail image comprising a reduced-size version of the input image in its entirety (page 1, paragraph 0010);
and
detecting redeye pixel areas in the thumbnail image (page 3, paragraph 0034 and 0035, page 4, paragraph 0036).

In pertinent part, the Examiner's position is that Kurtenbach discloses the detecting element of claim 1 in paragraphs 34-36. As explained in detail below, however, neither these paragraphs nor any other part of Kurtenbach expressly or inherently describes "detecting redeye pixel areas in the thumbnail image," as recited in claim 1.

Throughout his disclosure, Kurtenbach explains that his method involves detecting and correcting defects, such as red-eye, in one or more of the captured images received from a customer, and subsequently creating an index print of image thumbnails from the resulting (corrected and uncorrected) images. For example:

- In the abstract, Kurtenbach explains that (emphasis added):

... captured images received from a customer are scanned or read to detect any defects in the images and the images are appropriately corrected. In order to provide the customer with information regarding the corrections, an index print is created

that includes a plurality of thumbnail images thereon which corresponds to the captured images, and an indicator is provided on or near the thumbnail images which correspond to the corrected images.

- In paragraph 10, Kurtenbach explains that the process of creating an index print includes "... providing a red-eye icon adjacent to thumbnail images of the plurality of thumbnail images where red-eye has been detected and corrected in the captured images" (emphasis added).
- In paragraph 11, Kurtenbach explains that his method involves "... receiving images from a customer; detecting defects in the images; correcting images of the received images where defects have been detected ..." (emphasis added).
- In paragraph 29, Kurtenbach explained that (emphasis added):

"Within the context of the present invention, when processing the customer order, the images can be scanned to detect defects such as red-eye, underexposure, overexposure, etc. Appropriate enhancement and/or correction algorithms, which have been preprogrammed into IDM 18, can then be applied to the customer image order so as to correct the defects and/or improve the overall aesthetic appearance of the images when printed."
- In paragraph 32, Kurtenbach explained that (emphasis added);

... the images of the customer order are read or scanned to detect any defects which may be corrected by way of the digital enhancements. Once those defects are detected, the image is corrected in accordance with the appropriate image enhancement algorithms and the photographic print with the corrected image (if part of the customer order) is thereafter printed. Along with the detection, each of the images which have been corrected and/or enhanced is noted for the purpose of providing an indicator on an index print. Thereafter, an index print is created wherein each of the images of the customer order which have been corrected and/or enhanced will include an indicator representative of the type of correction/ enhancement made.

That is, in accordance with Kurtenbach's teachings in paragraph 32, defects are detected in the captured images; after the defects are detected, the images are corrected; and thereafter the index print is created. That is, in accordance with

Kurtenbach's express teachings, the thumbnail images that constitute the index print are not created until after the defects already have been detected and corrected in the captured images.

- In paragraph 33, Kurtenbach explains that "...During the processing of the customer's images in the example of FIG. 3, it has been detected that the original captured images which correspond to thumbnail images 100a, 100b, 100c, 100d, 100e and 100f included defects with respect to red-eye. ..."

The Examiner has cited paragraphs 34-36 of Kurtenbach's disclosure in support of the rejection of claim 1. These paragraphs, however, do not support the Examiner's position.

Paragraph 34 reads as follows (emphasis added):

Therefore, upon receiving index print 100 along with the remaining photographic prints of the customer order (if part of the customer order), a customer will appreciate that red-eye has been detected in each of the originally captured images that correspond to thumbnail images 100a-100f through red-eye icons 200. Further, the customer will appreciate that each of the photographic prints that correspond to thumbnail images 100a-100f have been corrected by removing red-eye from the image in each of the prints. This provides a customer with a quick and easy indication as to which prints or images were enhanced by the service provider and also an indication as to what type of correction has been made.

Thus, paragraph 34 expressly discloses that redeye is detected "in each of the originally captured image," not in the thumbnail images of the index print as assumed by the Examiner.

Paragraph 35 reads as follows (emphasis added):

FIG. 4 illustrates a further embodiment of an index print in accordance with the present invention. In the embodiment of FIG. 4, the indicator is in the form of an outline provided around the area where the correction has been made. Index print 300 of FIG. 4 includes thumbnail images in accordance with a customer order. These images include thumbnail images 300a, 300b and 300c where, as an example, red-eye has been detected and corrected. In order to provide a visual indication to a customer that red-eye has been removed from the images, an outline 400 is overlayed or

provided on each of thumbnail images 300a-300c. Outline 400 is preferably provided around the eyes where red-eye has been removed so as to provide a customer with a visual indication that red-eye has been removed from the images corresponding to each of thumbnail images 300a-300c.

The Examiner apparently has assumed that the underlined sentence quoted above supports her position that Kurtenbach discloses “detecting redeye pixel areas in the thumbnail image.” To the contrary, however, this sentence merely indicates that the thumbnail images 300a, 300b, and 300c include areas where redeye has been detected and corrected. This feature of the thumbnail images 300a, 300b, and 300c results from the fact that redeye was detected and corrected in the corresponding captured images of the customer's order before the thumbnail images 300a, 300b, and 300c were created for the index print. The Examiner's apparent interpretation of the sentence quoted above improperly relies on taking the quoted sentence in isolation outside the context of Kurtenbach's disclosure and interpreting the word “where” in a way that completely contradicts the remainder of Kurtenbach's disclosure. Such an approach is unreasonable because it is contrary to the normal and accepted way of construing written language to determine the meaning intended to be conveyed by that language.

Paragraph 36 reads as follows (emphasis added):

FIG. 5 illustrates a further example of an index print in accordance with the present invention. Index print 500 in FIG. 5 includes thumbnail images 500a, 500b, 500c and 500d where image correction has been performed in the corresponding captured images. In the embodiment of FIG. 5, the indicator is in the form of a frame 600 such as a color frame around each of thumbnail images 500a-500d. The indicator in the form of frame 600 represents the fact that a correction has been made to the images corresponding to each of thumbnail images 500a-500d. The correction as noted above, could be the removal of red-eye.

Paragraph 36 expressly discloses that “... image correction has been performed in the corresponding captured images.” Paragraph 36 does not disclose anything about “detecting redeye pixel areas in the thumbnail image.”

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For the reasons explained above, Kurtenbach neither expressly nor inherently describes "detecting redeye pixel areas in the thumbnail image," as recited in claim 1. Therefore, the rejection of claim 1 under 35 U.S.C. § 102(e) over Kurtenbach should be withdrawn.

C. Independent claim 58

Independent claim 58 recites elements that essentially track the pertinent elements of independent claim 1 discussed above. Therefore, claim 58 is patentable over Kurtenbach for at least the same reasons explained above.


III. Conclusion

For the reasons explained above, all of the pending claims are now in condition for allowance and should be allowed.

Charge any excess fees or apply any credits to Deposit Account No. 08-2025.

Respectfully submitted,

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